

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/08

Date: **29 June 2016**

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public Redacted Version of

“Decision on in-court protective measures for Witness D04-45”, ICC-01/05-01/08-2532 of 12 March 2013

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Édith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Other
Reparations Section**

Trial Chamber III (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case”), issues the following Decision on in-court protective measures for Witness D04-45.

I. Background and submissions

1. On 13 July 2012, the defence filed its “Defence Request for Protective Measures” (“Request”),¹ in which it seeks the Chamber’s authorisation for in-court protective measures for a number of witnesses including Witness D04-45.² In relation to Witness D04-45, as part of a group of witnesses [REDACTED] – (together “[REDACTED] Witnesses”), the defence requests in-court protective measures, in particular, the continued use of a pseudonym, image and voice distortion, and the use of private or closed session as necessary to avoid the identity of the witness becoming known by those outside the courtroom.³
2. More specifically, the defence makes a general assertion that the [REDACTED] Witnesses have expressed fears “that they [REDACTED] will be the subject of harassment, subjected to pressure, or that they will be [REDACTED]”.⁴ The defence submits that these warrant a finding on the part of the Chamber that the requested protective measures are necessary, reasonable and proportionate.⁵ Moreover, the defence submits that these witnesses [REDACTED].⁶ On the basis of these fears, the defence requests that the Chamber grant in-court protective measures for the [REDACTED] Witnesses, including Witness D04-45.
3. On 6 August 2012, the Office of the Prosecutor (“prosecution”) filed its “Prosecution’s Response to ‘Defence Request for Protective Measures’”

¹ Defence Request for Protective Measures, 13 July 2012, ICC-01/05-01/08-2244-Conf.

² ICC-01/05-01/08-2244-Conf, paragraphs 25 and 40 to 45.

³ ICC-01/05-01/08-2244-Conf, paragraphs 11, 25, and 45(b).

⁴ ICC-01/05-01/08-2244-Conf, paragraph 21.

⁵ ICC-01/05-01/08-2244-Conf, paragraphs 4, 20 to 25.

⁶ ICC-01/05-01/08-2244-Conf, paragraphs 23 and 24.

("Response").⁷ In its Response, the prosecution asserts that the defence "does not provide sufficiently specific and individualized information in relation to the witnesses concerned to justify the Chamber granting the requested [in-court protective measures]", and requests that the Chamber require such information in order to "assess whether *each* witness is facing an objective and precisely identified risk on the basis of his specific situation".⁸ The prosecution further submits that the defence "failed to submit individual fact-based requests, choosing instead to describe generic risks for entire categories of witnesses."⁹ On this basis, the Chamber should require the defence to provide all relevant information in support of the individual request for each witness so as to enable the Chamber to strike a proper balance between the obligation to protect witnesses and the duty to ensure the publicity of the proceedings.¹⁰ The prosecution finally observes that the defence's request did not specify whether it had obtained the consent of each witness for whom protective measures are sought, which the prosecution submits is necessary, since the Chamber has consistently sought witnesses' consent before deciding on requests for protective measures.¹¹

4. On 8 March 2013, the Victims and Witnesses Unit ("VWU") provided the Chamber with its "Security assessment witness 45/in-court protective measures" ("VWU Assessment").¹² The VWU informs the Chamber that [REDACTED]. In addition, the witness expressed concerns [REDACTED] which could exacerbate his security situation [REDACTED] if he is now identified as a defence witness by the public. However, the VWU notes that [REDACTED]. Furthermore, the witness confirmed his wish to benefit from in-court protective measures.

⁷ Prosecution's Response to "Defence Request for Protective Measures", ICC-01/05-01/08-2253-Conf.

⁸ ICC-01/05-01/08-2253-Conf, paragraph 7.

⁹ ICC-01/05-01/08-2253-Conf, paragraph 8.

¹⁰ ICC-01/05-01/08-2253-Conf, paragraph 8.

¹¹ ICC-01/05-01/08-2253-Conf, paragraph 9.

¹² Email by the Registry's Associate Legal Officer to the Chamber's Assistant Legal Officer, 08 March 2013, at 11.23.

5. The VWU further stresses that [REDACTED]. Therefore, the VWU states that keeping his identity and collaboration with the defence known to a limited number of persons would benefit the overall security strategy of the witness.
6. As a result, in order to alleviate the concerns of the witness and offer possible mitigation and risk reduction measures to a possible worsening of the witness's security situation, the VWU recommends the granting of in-court protective measures.

II. Analysis and conclusions

7. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered the following provisions: Articles 64(7), 67(1), and 68 of the Statute, Rule 87 of the Rules of Procedure and Evidence ("Rules"), Regulations 20, 41 and 42 of the Regulations of the Court, and Regulation 94 of the Regulations of the Registry.
8. When ruling upon a request for protective measures, pursuant to Article 68(1) and (2) of the Statute and Rule 87(1) of the Rules, the Chamber must take into account its obligation under Article 68 of the Statute "to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses". This obligation must be balanced against the Chamber's duty to observe the principle of publicity of proceedings, as enshrined in Articles 64(7) and 67(1) of the Statute and Regulation 20 of the Regulations of the Court. The Chamber notes that whilst the principle of publicity of proceedings is not

absolute,¹³ it must be paid due regard when protective measures that would limit the publicity of the proceedings are sought.¹⁴

9. The Chamber reiterates its consistent approach that in-court protective measures are to be granted on a case-by-case basis, based upon precise information on the objective risk the witness is exposed to. The Chamber notes that in its Request the defence has not generally provided individualised and specific information in relation to each witness for which it has requested protective measures. Nevertheless, the Chamber considers that it has sufficient information to rule on the request, drawn from the information provided by the defence, the witness himself and the VWU Assessment.
10. The Chamber further notes that the witness expressed his wish to benefit from in-court protective measures.
11. Turning to the particular circumstances of Witness D04-45, and the question whether the requested protective measures are justified, the Chamber is of the view that given [REDACTED] and taking into account the VWU Assessment in this regard, the witness risks being [REDACTED] should the fact that he has been called to testify by the defence become more widely known. For the above reasons, the Chamber considers that Witness D04-45 would face objectively justifiable risks as a result of publicly giving testimony on behalf of the defence.
12. The protective measures requested for Witness D04-45 are specifically provided for in Rule 87(3)(c), (d) and (e) of the Rules and have been considered as

¹³ Decision on in-court protective measures for Witnesses 38, 22 and 87, 19 November 2010, ICC-01/05-01/08-1021-Conf, paragraph 24, see also Decision on in-court protective measures for Witness 36, 9 March 2012, ICC-01/05-01/08-2160-Conf, paragraph 9; Decision on in-court protective measures for Witness 45, 24 January 2012, ICC-01/05-01/08-2063-Conf, paragraph 16.

¹⁴ Decision on in-court protective measures for Witness 65, 30 September 2011 (notified on 3 October 2011), ICC-01/05-01/08-1809-Conf, paragraph 7; see also ICC-01/05-01/08-2160-Conf, paragraph 9.

generally non-intrusive measures, allowing the Chamber to appropriately balance its duty to respect the principle of publicity and its obligation to protect victims and witnesses. In terms of the fairness of proceedings, the Chamber stresses that the protective measures sought protect the witness's identity solely with regard to the general public and do not deny the prosecution or the legal representatives' knowledge of the witness's identity. The prosecution and the legal representatives of victims will be able to listen to, see and question the witness *via* video-link.¹⁵ Furthermore, the imposition of the requested protective measures will still enable the parties and participants to question the witness publicly for the majority of his testimony, save for parts that would tend to identify him.

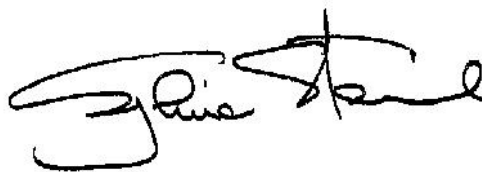
13. Balancing its duties to protect the witness and to respect the publicity of the proceedings, the Chamber considers that the requested in-court protective measures are necessary, reasonable and proportionate.

III. Conclusions

14. For the reasons set out above, the Chamber grants the requested in-court protective measures for Witness D04-45 and authorises the use of image and voice distortion, the assignment and use of a pseudonym, as well as the use of private session to protect his identity, provided that this is indicated in advance to the parties, participants and the Chamber.

¹⁵ On 6 March 2013, the Chamber granted the defence's request to hear Witness D04-45's testimony by means of video technology: Decision on "Defence Motion for authorization to hear the testimony of Witness D-45 via video Link", 6 March 2013, ICC-01/05-01/08-2525-Conf and public redacted version, ICC-01/05-01/08-2525-Red filed on 7 March 2013.

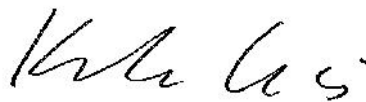
Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 29 June 2016

At The Hague, the Netherlands